

Department of Land and Natural Resources
Division of Boating and Recreation

Amendments

Amendments to Chapters 13-231 and 13-256
Hawaii Administrative Rules

1. Section 13-231-4, Hawaii Administrative Rules, is amended by amending subsection (b) to read as follows:

“§13-231-4 Use permits; part-time or intermittent occupancy. ***

(b) No use permit shall be issued authorizing temporary mooring of the same vessel within the same small boat harbor for a cumulative period of more than ninety days in the same calendar year, provided that mooring a vessel at Heeia Kea small boat harbor that is authorized for commercial use on Kaneohe Bay shall be allowed in accordance with section 13-256-73.11; and provided further that for Ala Wai small boat harbor the cumulative period shall not exceed one hundred and twenty days if space is available at the designated transient mooring area and the temporary mooring permit is issued in accordance with section 13-231-85.”

[Eff 2/24/94; am] (Auth: HRS §§200-2, 200-3, 200-6) (Imp: HRS §§ 200-2, 200-3, 200-6)

2. Section 13-231-59, Hawaii Administrative Rules, is amended by amending subsection (c) to read as follows:

“§13-231-59 Limitations on commercial permits for vessels moored elsewhere. ***

(c) The number of commercial permits for vessels moored elsewhere which may be issued for each small boat harbor shall be as follows:

- (1) Maalaea harbor: twenty;
- (2) Lahaina harbor: sixteen;
- (3) Manele [and Heeia-Kea harbors] harbor: [six each, except that for Heeia-Kea, commercial permits shall be limited to vessels having passenger categories I and II as listed in subsection (d), and may include the use of an auxiliary platform in an offshore operating area for which the owner has been issued a permit by the department; provided that there shall be no increase in the level of commercial activity by the permittee, as of June 19, 1990, the effective date of Act 208, SLH 1990] six; and

- (4) All other small boat harbors, except Heeia Kea: no limit. These limits notwithstanding, all valid commercial permits for vessels moored elsewhere in effect on the effective date of these rules shall be permitted to remain in effect and be eligible for reissuance provided that all other provisions of these rules are met. For Heeia Kea small boat harbor, all valid commercial permits for vessels moored offshore in Kaneohe Bay in effect on the effective date of these rules shall be eligible to be incorporated into a Kaneohe Bay waters commercial activity use permit pursuant to the provisions of section 13-256-73.1”

[Eff 2/24/94; am] (Auth: HRS §§200-2, 200-3, 200-4, 200-10, 200-39)
(Imp: HRS §§200-2, 200-3, 200-4, 200-10, 200-39)

3. Section 13-231-67, Hawaii Administrative Rules, is amended by amending subsection (d) to read as follows:

“§13-231-67 Limitation on commercial permits issued for the use of state boat launching ramps. ***

(d) The maximum number of commercial permits which may be issued for the use of the following launching ramps are:

- | | | |
|------|--------------|-----------------------------------------------------|
| (1) | Ala Wai | - none |
| (2) | Keehi | - none |
| (3) | Heeia Kea | - [7] <u>as provided for in section 13-256-73.1</u> |
| (4) | Maunalua Bay | - 5 |
| (5) | Mala | - 15 |
| (6) | Kihei | - 15 |
| (7) | Manele | - 3 |
| (8) | Kaunakakai | - 5 |
| (9) | Kukuiula | - 6 |
| (10) | All others | - no limit.” |

[Eff 2/24/94; am] (Auth: HRS §§200-2, 200-3, 200-4, 200-10, 200-39)
(Imp: HRS §§220-2, 200-3, 200-4, 200-10, 200-39)

4. Section 13-256-71, Hawaii Administrative Rules, is amended to read as follows:

“§13-256-71 [Definition.] Definitions. As used in this subchapter:

“Commercial ocean use activities” means the commercial operation of thrill craft, high speed boating, water sledding, parasailing, sailing and snorkeling tours, glass bottom boat tours, canoeing, kayaking, windsurfing, sailboarding, fishing, swimming, scuba diving, sea-walker, underwater operations, or any other similar commercial ocean recreation or activity for hire.

“Family member,” means a person’s spouse or child who has reached the age of majority. For the purpose of this definition a child must be biological or prior to the age of majority must have been adopted, including a “hanai” adoption.

“[The] Windward Oahu Ocean Recreation Management Area” means all ocean waters and navigable streams from the boundary of Kahana Bay to Makapuu Point, Oahu, Hawaii, extending three thousand feet seaward of the territorial sea baseline as shown on Exhibit “T”, dated August 15, 1988, incorporated herein, located at the end of this subchapter.”

[Eff 2/24/94; am] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-24, 200-39)
(Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24, 200-39)

5. Section 13-256-72, Hawaii Administrative Rules, is amended to read as follows:

“§13-256-72 Kualoa [Ocean Water Restricted Zones] waters restricted zones.

(a) Zone A Kualoa [Ocean Waters] waters restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit “U”, “Kualoa, Oahu, Hawaii,” Date [June 30, 1988] September 8, 1998, incorporated herein, and located at the end of this subchapter. The boundaries of Zone A are as follows:

Beginning as a point [on the low water mark of the shoreline which is four hundred seventy-five feet south of the groin across from the sugar mill, then by azimuth measured clockwise from True South, 270 degrees for a distance of eight hundred ten feet; 360 degrees for a distance of five hundred twenty-five feet; 090 degrees to a point on the low water mark of the shoreline; then along the low water mark] at approximately 21° 31’ 16.6” N/ 157° 50’ 06.9” W, then going in an easterly direction to approximately 21° 31’ 16.6” N/ 157° 49’ 58.2” W, then going in an southerly direction to approximately 21° 31’ 11.5” N/ 157° 49’ 58.2” W, then going in a westerly direction to approximately 21° 31’ 11.5” N/ 157° 50’ 07.3” W, then to the point of beginning.

Zone A is designated as a commercial thrill craft zone for the Kualoa full service permit. [No] Not more than six rental thrill craft and one thrill craft used for safety and rescue purposes shall operate at any one time. No person shall operate or moor a vessel or sailboard in [this zone] Zone A when [in use] being used by commercial thrill craft. Commercial thrill craft shall be operated within Zone A only between the hours of 9:00 a.m. and 5:00 p.m., Mondays through [Fridays] Saturdays. No commercial thrill craft shall be operate within Zone A on [Saturdays,] Sundays[, and state] or federal holidays.

(b) Zone B Kualoa [Ocean Waters] waters restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit “U”, “Kualoa, Oahu, Hawaii,” dated [June 30, 1988] September 8, 1998, incorporated herein, and located at the end of the subchapter. The boundaries of Zone B are as follows:

Beginning at a point [on the low water mark of the shoreline which is two hundred feet north of the boundary of Kualoa Regional Park; then along low water mark of the shoreline in a northerly direction to a point marking to southwest point of Zone A; then by azimuth measured clockwise from True South, 270 degrees for a distance of eight hundred feet; 180 degrees for a distance of five hundred twenty-five feet; 270 degrees for a distance of three hundred sixty feet; 360 degrees for a distance of one thousand thirty-five feet;] at approximately 21° 31’ 16.6” N/ 157° 49’ 58.2” W, then in an easterly direction to approximately 21° 31’ 16.6” N/ 157° 49’ 56.0” W, then in an southerly direction to approximately 21° 31’ 06.4” N/ 157° 49’ 56.5” W, then in a westerly direction to approximately 21° 31’ 06.4” N/ 157° 50’ 07.5” W, then in a northerly direction to approximately 21° 31’ 11.5” N/ 157° 50’ 07.7” W, then in an easterly direction to approximately 21° 31’ 11.5” N/ 157° 49’ 58.2” W, then in a northerly direction [then] by straight line to the point of beginning.

Zone B is designated as a non-exclusive commercial ocean water sports zone [for sailing, windsurfing and scuba diving]. High speed towing, water skiing, and water sledding shall be prohibited. [Vessels] All vessels transiting [this zone] Zone B shall proceed with extreme caution.

(c) All commercial ocean [recreation] use activities are prohibited within Kualoa [ocean] waters restricted zones [(A)] and [(B)] on Sundays[, effective January 1, 1991] and federal

holidays.” [Eff 2/24/94; am] (Auth: HRS §§200-22, 200-23, 200-24, 200-37, 200-39) (Imp: HRS §§200-22, 200-23, 200-24, 200-37, 200-39)

6. Chapter 13-256, Hawaii Administrative Rules, is amended by adding a new section 13-256-72.1 to read as follows:

“§13-256-72.1 Kualoa waters restricted zones permit.

(a) Not more than one Kualoa full service permit shall be issued for Kualoa waters restricted zones subject to the following conditions:

- (1) The number of thrill craft shall be in accordance with the limits authorized in section 13-256-72(a). The number and type of other vessels and equipment shall not exceed the number and type of vessel and equipment permitted by the department on the effective date of these rules;
- (2) All thrill craft and other operational vessels and equipment shall be registered in accordance with section 13-256-4 (a), notwithstanding section 13-256-4(b), and display a current Ocean Recreation Management Area decal;
- (3) Replacement or substitution of any existing vessels or equipment shall require prior written approval by the department and the department shall have discretion to permit a vessel substitution with a similar length vessel; provided that the increase is not greater than ten per cent of the length of the vessel being substituted as it existed on May 22, 2000. An increase of greater than ten per cent of the length of the authorized vessel of record on May 22, 2000 is prohibited;
- (4) The maximum number of customers per day may be established through the conservation district use permit application process, but shall not exceed one-hundred and fifty customers;
- (5) Water sledding, water skiing, and high speed towing shall be prohibited;
- (6) The permittee shall maintain a daily log of the number of customers serviced by thrill craft and shall present the logs to division of boating and ocean recreation for review and inspection upon request; and
- (7) Educational and not-for-profit tours shall not be counted against daily customer limits, but shall not exceed the maximum number of one hundred fifty customers allowed per day. Not-for-profit tours and passengers shall not be mixed with commercial customers on the vessel at the same time. Not-for-profit passengers shall not engage in thrill craft or high speed towing activities.

(b) All associated commercial operational and supporting activities shall be conducted from land in accordance with all applicable land use laws and zoning ordinances.

(c) Any vessel with an authorized carrying capacity of more than six passengers with installed toilet facilities shall be equipped with a United States Coast Guard approved marine sanitation device.

(d) Any transfer by the permittee or any transfer or combination of transfers of a majority interest or greater by the owners or shareholders of record of a business entity holding a permit shall automatically void the use of thrill craft and the permit shall revert to a large snorkel tour permit as found in section 13-256-73.5, unless the transfer is to a family member.

(e) Any transfer shall result in the assessment of a business transfer fee in accordance with section 200-37, HRS, for a transfer that includes the use of thrill craft and in accordance with section 13-256-7 for the transfer of a large snorkel tour.

(f) The permittee shall identify and mark the boundaries of the designated thrill craft operating zone with temporary floating buoys only installed during periods of commercial operation.

[Eff] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-37, 200-39) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-37, 200-39)

7. Section 13-256-73, Hawaii Administrative Rules, is amended to read as follows:

“13-256-73 Kaneohe Bay [Waters] ocean waters. (a) Kaneohe Bay ocean waters means the area encompassed by the boundaries shown on Exhibit “V”, “Kaneohe Bay [Waters Boundary & Commercial High Speed Boating Zone], Oahu, Hawaii,” dated [May 15, 1990] April 16, 2001, incorporated herein, and located at the end of this subchapter. The boundaries are described as follows:

Beginning at the northern point on the shoreline of Mokapu Point, located at approximately 21° 27' 33.6" N/ 157° 43' 21.6" W, then [by azimuth measured clockwise from True South, 127 degrees for a distance of fifty thousand nine hundred and twenty-five feet] in a straight line to Makahonu Point, located at approximately 21° 32' 33.6" N/ 157° 50' 34.2" W, then along the shoreline of Kaneohe Bay to the point of beginning.

[(b) Commercial ocean recreation activities shall be restricted within Kaneohe bay waters as follows:

(1) No commercial operator, holding a valid ocean recreational management area commercial us permit, shall operate a thrill craft, engage in water sledding or commercial high speed boating, or operate a motor vessel towing a person engaged in water sledding during weekends and state or federal holidays.

(2)]

(b) All commercial ocean [recreation] use activities in Kaneohe Bay ocean waters are prohibited on [Sunday, effective January 1, 1991] Sundays and federal holidays.

(c) Touching, walking or sitting, standing, or anchoring on coral shall be prohibited within Kaneohe Bay ocean waters.

[(c)] (d) Zone A Kaneohe Bay restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit [“W”]“X”, “Kaneohe, Oahu, Hawaii,” dated [October 24, 1990] September 25, 2000, incorporated herein, and located at the end of this subchapter. The boundaries of Zone A are [described] as follows:

[Beginning at a point in the water by azimuth measured clockwise from True South, 234.5 degrees for a distance of three thousand nine hundred feet from the Sampan Channel front navigational range light; then on a radius of two hundred feet around that point.] Zone A is a circle with a radius of two hundred feet with its center at approximately 21° 26' 27.5" N/ 157° 47' 45.5" W.

[(d)] (e) Zone B Kaneohe Bay restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit [“W”] “X”, “Kaneohe, Oahu, Hawaii,” dated [October 24, 1990] September 25, 2000, incorporated herein, and located at the end of this subchapter. The boundaries of Zone B are as follows:

[Beginning at a point in the water, by azimuth measured clockwise from True South, 200 degrees for a distance of five thousand two hundred eighty feet from a point on the low water mark on the northern tip of Kealohi Point; then on a radius of two hundred feet around that point.] Zone B is circle with a radius of two hundred feet with its center at approximately 21° 27' 28.5" N/ 157° 48' 08.5" W.

[(e)] (f) Zone C restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit ["W"] "X", "Kaneohe, Oahu, Hawaii," dated [October 24, 1990] September 25, 2000, incorporated herein, and located at the end of this subchapter. The boundaries of Zone C are as follows:

[Beginning at a point in the water, by azimuth measured clockwise from True South, 194 degrees for a distance of five thousand four hundred ninety feet from a point on the low water mark on the northern tip of Kealohi Point; then on a radius of two hundred feet around that point.] Zone C is a circle with a radius of two hundred feet with its center at approximately 21° 27' 32" N/ 157° 48' 13.5" W.

[(f)] Zone D Kaneohe Bay restricted zone is the area encompassed by the boundaries of the zone shown on exhibit "W", dated October 24, 1990, and located at the end of this subchapter. The boundaries of Zone D are as follows:

Beginning at a point in the water, by azimuth measured clockwise from True South, 187 degrees for a distance of five thousand seven hundred thirty feet from a point on the low water mark on the northern tip of Kealohi Point; then on a radius of two hundred feet around that point.]

(g) Zones A, B, and C are subject to the following:

- (1) Zones A, B, and C[, and D] are designated as commercial thrill craft zones where full service permittees shall be required to operate. [No] Not more than six rental thrill craft shall operate within each [zone] of the zones A and B at any one time. No more than three rental thrill craft shall operate within zone C at any one time. [No person shall operate or moor a vessel or sailboard in these zones.] Zone A may be referred to as the Checker Reef commercial thrill craft zone. Zones B and C may be referred to as the commercial thrill craft sand flat zones.
- (2) Commercial thrill craft shall be operated in a clockwise direction only within zones A, B, and C[, and D] only between the hours of 9:00 a.m. and 5:00 p.m., Mondays through [Fridays] Saturdays. No commercial thrill craft shall be operated within Zones A, B, or C[, and D] on [Saturdays,] Sundays[, and state] or federal holidays.

[(g)] Zone E Kaneohe Bay restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit "V-1", dated October 24, 1990, ,and located at the end of this subchapter. The boundaries of Zone E are as follows:

Beginning at a point in the water which is located by azimuth measured clockwise from True south, 219 degrees for a distance of three thousand four hundred eighty feet from the low water mark on the northern tip of Wailau Point "Kahaluu Landing"; then 300 degrees for a distance of five thousand two hundred eighty feet; 026 degrees for a distance of eight hundred forty feet; 032 degrees for a distance of five hundred forty feet; 120 degrees for a distance of one thousand six hundred twenty feet; then by a straight line to the point of beginning.:]

(h) Zone D Kaneohe Bay restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit “W”, “Kaneohe, Oahu, Hawaii,” dated September 25, 2000, and located at the end of this subchapter. The boundaries of Zone D are as follows:

Zone D is rectangular in shape which borders the Kaneohe Bay entrance channel daybeacon 11 beginning at a point in the water which is located at approximately 21° 28’ 32” N / 157° 49’ 39” W, then by a straight line in a due East (true) direction to approximately 21° 28’ 32” N / 157° 49’ 32” W, then in a straight line to approximately 21° 28’ 10.5” N / 157° 49’ 27” W, then in a straight line due West (true) to approximately 21° 28’ 10.5” N / 157° 49’ 34” W, then in a straight line back to beginning.

[h)] Zone [E] D is restricted to commercial SCUBA, snorkeling and sightseeing cruises only. Anchoring on live coral is prohibited. No person shall walk, stand or sit on live coral formations. Commercial snorkeling operators shall have a snorkel vest available for each snorkeler in the water and encourage snorkelers to use the vest to decrease the likelihood of standing on coral. Activity shall take place only near the reef, not on the reef. Vessels entering this zone shall use extreme caution while this zone is occupied during diving activities.

[(i) Zone F Kaneohe Bay restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit “W”, October 24, 1990, and located at the end of this subchapter. The boundaries of Zone F are as follows:

Beginning at a point in the water which is located by azimuth measured clockwise from True South, 182 degrees for a distance of four thousand two hundred sixty feet from the North tip of the pier at Heeia Kea Small Boat Harbor; then 120 degrees for a distance of one thousand nine hundred fifty feet; 212 degrees for a distance of five hundred forty feet; 206 degrees for a distance of eight hundred forty feet; 314 degrees for a distance of one thousand two hundred feet; then by a straight line to the point of beginning.]

(i) Zone E Kaneohe Bay restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit “X”, “Kaneohe, Oahu, Hawaii,” dated September 25, 2000, incorporated herein, and located at the end of this subchapter. The boundaries of Zone E are as follows:

Zone E is a circle with a radius of three hundred ten yards with its center located at approximately 21° 27’ 25” N / 157° 47’ 46.5” W. Zone E is restricted to SCUBA, snorkeling, underwater activities, and sightseeing cruises only. Anchoring on live coral is prohibited. No person shall walk, stand or sit on live coral formations. Commercial snorkeling operators shall have a snorkel vest available for each snorkeler in the water and encourage snorkelers to use the vest to decrease the likelihood of standing on coral. Vessels entering this zone shall use extreme caution while this zone is occupied during diving activities.

(j) Zone [G] F Kaneohe Bay restricted zone is the area encompassed by the boundaries of the zone shown on exhibit “W”, “Kaneohe Bay, Oahu, Hawaii,” dated [October 24, 1990,] September 25, 2000, incorporated herein, and located at the end of this subchapter. The boundaries of Zone [G] F are as follows:

Beginning at a point in the water which is located [by azimuth measured clockwise from True South, 213 degrees for a distance of three thousand eight hundred ten feet from the north tip of the pier at Heeia Kea Small Boat Harbor; then 120 degrees for a distance of one thousand six hundred eighty feet; 211 degrees for a distance of seven hundred twenty feet; 301 degrees for a distance of one thousand six hundred sixty-five feet;] at approximately 21° 26’ 50” N / 157° 47’ 45” W, then by a straight line to approximately

21° 26' 23.5" N / 157° 47' 25" W, then by a straight line to approximately 21° 26' 16" N / 157° 47' 34" W, then by a straight line to approximately 21° 26' 20.5" N / 157° 47' 59.3" W, then by a straight line to approximately 21° 26' 28.5" N / 157° 48' 09" W, then [by] in a straight line to the point of beginning.

Zone F is designated as non-exclusive commercial ocean water sports zone. All vessels entering this zone shall exercise extreme caution while it is being utilized for commercial ocean water sports activities. Anchoring on live coral is prohibited. No person shall walk, stand or sit on live coral formations. Commercial operators operating in this zone shall have a snorkel vest available for each snorkeler in the water and encourage snorkelers to use the vest to decrease the likelihood of standing on coral. All activity on top of Checker Reef in Zone F is prohibited.

(k) Zone G Kaneohe Bay restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit "X", "Kaneohe, Oahu, Hawaii," dated September 25, 2000, incorporated herein, and located at the end of this subchapter. The boundaries of Zone G are as follows:

Beginning at a point in the water which is located at approximately 21° 26' 25" N / 157° 47' 49" W, then by a straight line to approximately 21° 26' 22" N / 157° 47' 34" W, then by a straight line to approximately 21° 26' 16.5" N / 157° 47' 36" W, then by a straight line to approximately 21° 26' 19" N / 157° 47' 51" W, then by a straight line to the point of beginning.

Zone G is designated as non-exclusive commercial water ski and water sledding zone. Commercial water skiing and water sledding and the operation of towed devices used to carry passengers for commercial purposes shall be restricted to this zone. No more that one commercial vessel for water sledding shall be permitted to tow at any speed within this zone at any one time for safety purposes. Commercial large full service permittees and non-commercial recreational users shall share the zone equally. All towing shall be conducted in a clockwise direction. No person shall moor or anchor a vessel within this zone. High speed operations shall take place in deep water 200 feet or more from any reef edge, reef crest, or sand flat.

[(k) Zones F and G are designated as commercial and recreational water ski and water sledding zones. All water skiing and water sledding and the operation of towed devices used to carry passengers for both commercial and recreational purposes west of the Sampan Channel is restricted to these zones. No more than four commercial operating area use permits for water sledding shall be permitted in Zone F or G for safety purposes. No Person shall moor a vessel within these zones.

(l) Zone H restricted zone is the area encompassed by the boundaries show on Exhibit "V-1", dated October 24, 1990, and located at the end of this subchapter. The boundaries of Zone H are as follows:

Beginning at a point in the water which is located by azimuth measure clockwise from True South, 219 degrees for a distance of three thousand four hundred eighty feet from the low water mark on the tip of Wailau Point "Kahaluu Landing"; Then 168 degrees for a distance of three thousand five hundred seventy feet; 270 degrees for a distance of one thousand three hundred twenty feet; 311 degrees for a distance of nine thousand feet; 039 degrees for a distance of one thousand two hundred seventy-five feet; 012 degrees for a distance of one thousand fifty feet; 031 degrees for a distance of seven hundred twenty feet; 120 degrees for a distance of five hundred ten feet; 173 degrees for a distance of one thousand three hundred sixty-five feet; 134 degrees for a distance of hone thousand two hundred feet; then by a straight line to the point of beginning.

(m) Zone H-1 restricted zone is the area encompassed by the boundaries shown on Exhibit “W”, dated October 24, 1990, and located at the end of this subchapter. The boundaries of Zone H-1 are as follows:

Beginning at a point in the water which is located by azimuths measure clockwise from True South, 206.5 degrees for a distance of six thousand five hundred ten feet from a point on the low water mark on the northern tip of the Kealohi Point; then 210 degrees for a distance of two thousand seven hundred seventy-five feet; 227 degrees for a distance of two thousand seven hundred seventy-five feet; 039 degrees for a distance of one thousand fifty feet; then in a straight line to the point of beginning.

No person shall operate a vessel within Zones H and H-1 at a speed in excess of slow-no-wake. Recreational thrill craft and water ski and water sledding activities are prohibited. Commercial vessels and activities are prohibited, except for commercial fishing vessels engaged in baiting operations.

(n) (1) [Kaneohe Bay recreational thrill craft zone is the area seaward of the boundaries of Zones “H”, “H1” and “I” shown on Exhibit “X”, dated October 24, 1990, and located at the end of the subchapter. The boundaries are as follows:

Beginning at a point in the water immediately south of buoy “3”, which marks the southeast boundary of the northern shipping channel in Kaneohe Bay; then in southerly direction along the eastern boundary of the channel to the intersection of the Sampan Channel at buoy “10”, except where zoned for other activity; then in a northeast direction along the northwestern boundary of the Sampan Channel to buoy R-2; then on a straight line to the point of beginning. The Kaneohe Bay recreational thrill craft zone is designated for recreational thrill craft.] Recreational thrill craft shall not be operated in any [other] area of Kaneohe Bay [.] except in the designated recreational thrill craft zone as described in section 13-256-77. Recreational thrill craft shall access the recreational thrill craft zone by transiting from Heeia Kea small boat harbor directly to the Sampan channel to the Kaneohe recreational thrill craft zone as described in section 13-256-77.

[(o) Zone I restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit “W”, dated October 24, 1990, and located at the end of this subchapter. The boundaries of Zone I are as follows:

Beginning at a point in the water which is located by azimuths measured clockwise from True South, 213 degrees for a distance of three thousand eight hundred then feet from the north tip of the pier at Heeia Kea Small Boat harbor; then 210 degrees for a distance of six hundred seventy-five feet; 121 degrees for a distance of one thousand six hundred sixty-five feet; 192 degrees for a distance of one thousand fifty feet; 219 degrees for a distance of one thousand two hundred seventy-five feet; 311 degrees for a distance of five thousand eight hundred twenty feet; 037 degrees for a distance of one thousand nine hundred fifty feet; then by a straight line to the point of beginning.]

(m) Zone H restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit “X”, “Kaneohe, Oahu, Hawaii,” dated September 25, 2000, incorporated herein, and located at the end of this subchapter. The boundaries of Zone H are as follows:

Beginning at a point in the water which is located at approximately 21° 27' 32.5" N / 157° 48' 19.5" W, then by a straight line to approximately 21° 27' 26.5" N / 157° 48' 10" W, then by a straight line to approximately 21° 27' 14.5" N / 157° 48' 17" W, then by a straight line to approximately 21° 27' 20" N / 157° 48' 27" W, then in a straight line to the point of beginning.

Zone H is designated as non-exclusive commercial water ski and water sledding zone. Commercial water skiing and water sledding and the operation of towed devices used to carry passengers for commercial purposes are restricted to this zone. No more than two commercial vessels for water sledding shall be permitted to tow at high speed within this zone at any one time for safety purposes. Commercial full service permittees and non-commercial recreational users shall share the zone equally. All towing shall be conducted in a clockwise direction. No person shall moor a vessel within this zone. High speed operations must take place in deep water 200 feet or more from any reef edge, reef crest, or sand flat.

(n) Zone I restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit "X", "Kaneohe, Oahu, Hawaii," dated September 25, 2000, incorporated herein, and located at the end of this subchapter.

The boundaries of Zone I are as follows: Beginning at a point in the water located at approximately 21° 27' 41" N / 157° 48' 18" W, then by a line parallel to the edge of the sand flat to approximately 21° 27' 32" N / 157° 48' 02" W, then by a straight line to approximately 21° 27' 25" N / 157° 48' 07" W, then by a straight line to approximately 21° 27' 34" N / 157° 48' 22.5" W, then by a straight line to the point of beginning.

Zone I is designated as non-exclusive commercial ocean water sports zone. Other vessels entering this zone shall exercise extreme caution while it is being used for commercial ocean water sports activities. Commercial operators operating in this zone shall have a snorkel vest available for each snorkeler in the water and encourage snorkelers to use the vest. Commercial operators whose passengers do not operate thrill craft must keep their passengers out of Thrill Craft Zones B and C. Vessels operating in Zone I shall maintain a watch for sea turtles, which may mitigate to the north central part of the zone, and exercise care to stay clear of any turtle observed.

[(p) Zone J restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit "W", dated October 24, 1990, and located at the end of this subchapter. The boundaries of Zone J are as follows:

Beginning at a point in the water which is located by azimuths measured clockwise from True south, 235 degrees for a distance of two thousand five hundred eighty feet from the front Sampan Channel navigational range light; then 114 degrees for a distance of one thousand two hundred thirty feet; 218 degrees for a distance of one thousand eight hundred feet; 287 degrees for a distance of one thousand six hundred ninety-five feet; 006 degrees for a distance of one thousand eighty feet; then by a straight line to the point of beginning.

(q) Zones I and J are designated as ocean water sports zones. Other vessels entering these zones shall exercise extreme caution while they are being utilized for commercial ocean water sports activities. Vessels operating in Zone I shall maintain a watch for sea turtles which may migrate to the north central part of the zone, and exercise care to stay clear of any turtles observed.

(r) Zone J-1 Kaneohe Bay restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit "W", dated October 24, 1990, and located at the end of this subchapter. The boundaries of Zone J-1 are as follows:

Beginning at a point in the water by azimuths measured clockwise from True South, 206 degrees for a distance of two thousand two hundred fifty feet from Sampan Channel front navigational range light; then 114 degrees for a distance of two hundred twenty-five feet; 180 degrees for a distance of three hundred seventy-five feet; 218 degrees for a

distance of one thousand four hundred forty feet; 287 degrees for a distance of four hundred fifty feet; then in a straight line to point of beginning.

(s) Zone J-1 is designated as commercial water ski and water sledding zones. All water skiing and water sledding and the operation of towed devices used to carry passengers for both commercial and recreational purposes is restricted to this zone. Only one commercial operating area use permit for water sledding shall be permitted within this zone for safety purposes. No person shall moor a vessel within this zone.

(t) (o) Kaneohe Bay [channel] speed restrictions. [Notwithstanding any rule to the contrary, the speed of any watercraft shall not exceed 15 knots when within the confines of the Kaneohe Bay channel as shown on Exhibits “V-1”, “W”, and “X” dated October 24, 1990, and located at the end of this subchapter. The boundaries are described as follows:

The Kaneohe Channel, beginning at a line across the channel at daybeacon G”11”, then through each and every buoy and day beacon in ascending order to the intersection at the extended line of the Sampan Channel range marks.]

In addition to speed restrictions found in section 13-244-9, slow-no-wake restrictions shall apply in Kaneohe Bay offshore mooring areas, Kaneohe Bay ocean waters zones D, E, F, and I, Kualoa waters zone B, and anywhere within the Kaneohe Bay when a vessel is within two hundred feet of Kapapa Island and the Central Reef shallows defined as areas having a depth of less than or equal to five feet mean lower low water, including the area of Ahu O Laka Island, (“The Sand Bar”).

[(u)] (p) No increase in the level of commercial ocean use activities [as of July 3, 1990] existing on July 1, 1993 will be permitted within Kaneohe Bay waters.

(q) Activities conducted by a bona-fide educational institution or an organization which is registered with the State and classified by the Internal Revenue Service as a not-for-profit (section 501 (c)(3)) organization shall not be subject to the restrictions of subsection (p), but shall operate only in accordance with a permit issued by the department pursuant to chapter 13-231 or chapter 13-256 or both.

(r) Anchoring or mooring on living coral is prohibited.

(s) All sea walker activity shall be done on a flat sandy bottom, not on sea grass beds.

(t) All underwater activity, including but not limited to SCUBA, snorkeling, and sea-walker, shall prohibit participants from touching coral and/or living parts of a reef.”

[Eff 2/24/94; am] (Auth: HRS §§220-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-37, 200-39) (Imp: HRS §§220-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-37, 200-39)

8. Chapter 13-256, Hawaii Administrative Rules, is amended by adding a new subsection 13-256-73.1 to read as follows:

“§13-256-73.1 Kaneohe Bay ocean waters commercial activity use permits. (a) No commercial ocean use activity may be conducted within Kaneohe Bay waters except in accordance with a Kaneohe Bay waters commercial activity use permit issued by the department. For the purpose of this section, “full service permit” means a permit which includes thrill craft, water sledding, and other high speed boating activities in addition to sailing, snorkeling, scuba diving, sailboarding, and other related water recreational activities approved by the department.

(b) Commercial operators possessing a valid Kaneohe Bay Ocean Recreation Management Area use permit on the effective date of these rules shall be authorized a similar permit as described below upon complying with all laws and rules of the department. The number and types of Kaneohe Bay ocean waters commercial activity use permits authorized for Kaneohe Bay ocean waters shall be as follows:

- (1) One full service permit as authorized in section 13-256-72.1;
- (2) Two large full service permits as authorized in section 13-256-73.2;
- (3) One small full service permit as authorized in section 13-256-73.3;
- (4) One small full service permit as authorized in section 13-256-73.4;
- (5) Three large snorkel tour operations, including associated underwater activities approved by the department, as authorized in section 13-256-73.5;
- (6) Three small sail or snorkel tour operations, including associated underwater activities approved by the department, as authorized in section 13-256-73.6; and
- (7) One glass bottom boat tour operation as authorized in section 13-256-73.7.

(c) Any transfer of a large full service permit, except for a transfer to a family member as defined in section 13-256-71, shall revert the large full service permit to a large snorkel tour permit with an aggregate maximum carrying capacity of no more than one-hundred fifty passengers for the vessel or vessels in use, but not exceeding the certified passenger carrying capacity of the individual vessel. Any change from a large full service permit to a large snorkel tour permit shall be on a one for one basis reducing the number of large full service permits by one and authorizing an increase to the number of large snorkel tour permits by one.

(d) Any transfer of a small full service permit, except for a transfer to a family member as defined in section 13-256-71, shall revert the small full service permit to a small sail or snorkel tour permit with an aggregate maximum carry capacity of no more than sixty passengers for the vessel or vessels in use, but not exceeding the certified passenger carrying capacity of the individual vessel. Any change from a small full service permit to a small sail or snorkel tour permit shall be on a one for one basis reducing the number of small full service permits by one and authorizing an increase to the number of small sail or snorkel tour permits by one.

(e) The Kaneohe Bay ocean waters commercial activity use permit required under this section shall satisfy the requirement for all other harbor use permits required of commercial operators under chapter 13-231, with the exception of a mooring permit for each vessel moored in Heeia Kea Harbor or offshore.

(f) The Kaneohe Bay waters commercial activity use permit fee per permit shall be as provided in HRS chapter 200 and rules adopted thereunder.

(g) The report of gross receipts shall be received by the department for each month covered by the commercial activity use permit no later than the end of the month following the reported month and shall be submitted on a form acceptable to the department. Failure to submit the report of gross receipts as required for a period in excess of sixty days following the due date, may be treated by the department as causing an automatic termination of the Kaneohe Bay waters commercial activity use permit.

(h) The department may conduct a financial audit of the records of a Kaneohe Bay ocean waters commercial use permit to determine the accuracy of reported gross receipts or to inspect any other financial information directly related to the enforcement of these rules after providing notice, as described in section 13-230-6, no less than thirty days prior to the audit.

(i) Any vessel with an authorized carrying capacity of more than six passengers with installed toilet facilities shall be equipped with a United States Coast Guard approved marine sanitation device.

(j) All permittees shall maintain a daily log of the operations, to include vessel and operator identifying information, number of customers serviced, fuel or sewage spills, sewage pumping out, refueling, incidents on the water and time of departure and arrival at the Heeia Kea Small Boat Harbor pier, or authorized passenger loading and unloading area, or appropriate operating zone. All permittees shall submit the logs to the department each week.

(k) There shall be no passenger loading and unloading at a launch ramp at Heeia Kea Small Boat Harbor.

(l) Large full service permits authorized by section 13-256-73.2, shall be allowed to use no more than three trailers per permit per day at the Heeia Kea harbor launch ramps for the launching and recovery of vessels. Small service permits authorized by sections 13-256-73.3 and 13-256-73.4, shall be allowed not more than two trailers per permit per day to use the Heeia Kea harbor launch ramps for the launching and recovery of vessels. Each trailer allowed to use a launch ramp shall be properly licensed and shall be issued a ramp use decal by the department which shall be affixed to the forward end of the trailer tongue.

(m) No activity that is new to a permittee may be conducted without prior written authorization from the department.

(n) Permittees shall establish a safety instruction program for customers that includes, but is not limited to, the use of a personal flotation device, and notification of hazardous conditions or areas and restricted areas.

(o) Permittees shall maintain a visual watch over persons in the water.

(p) Permittees shall have no less than one staff member on site within the permittee's Kaneohe Bay operating area who carries a current adult cardio-pulmonary resuscitation (CPR), and standard first aid and lifeguard training certificates. A list of water safety training certificates acceptable to the department shall be provided to the permittee."

[Eff] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-37, 200-39) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-37, 200-39)

9. Chapter 13-256, Hawaii Administrative Rules, is amended by adding a new section 13-256-73.2 to read as follows:

"§13-256-73.2 Large full service permit restrictions. (a) Not more than one-hundred fifty customers per day per permit shall be allowed for a large full service permit.

(b) The number and type of vessels and equipment which may be authorized by the department under this permit category are:

(1) Two host vessels with an aggregate maximum carrying capacity of one-hundred fifty passengers for the vessel or vessels in use, but not exceeding the certified passenger carrying capacity of the individual vessel.

(2) Six rental thrill craft and one thrill craft used for operational safety purposes;

(3) Two equipment barges, for each of which the passenger carrying capacity shall be six or as established by a United States Coast Guard Certificate of Inspection;

(4) Three motorboats, for each of which the passenger carrying capacity shall be six or less, as established by a United States Coast Guard Certificate of Inspection; and

- (5) Other non-motorized craft including kayaks, canoes, wind surfers, sailboards, and small sailing vessels no larger than 20 feet, and individual water sports equipment as needed.
- (c) The passenger carrying capacity of each host vessel and service barge having a carrying capacity of over six passengers shall be established by a United States Coast Guard Certificate of Inspection.
- (d) The permittee shall indicate which host vessel is declared to be the primary vessel used to embark and disembark passengers from the pier. This vessel shall be allowed to load to full permit capacity of one-hundred fifty. Should the certified passenger capacity of the primary vessel be less than one-hundred fifty, the vessel may conduct more than one passenger loading trip to the pier to achieve the maximum number of customers permitted per day.
- (e) The three small motorboats authorized under this permit may be either operated directly by the permittee or under contract with another party. Not more than one small motorboat shall be authorized to load or unload passengers at the pier.
- (f) Host vessels shall be equipped with a United States Coast Guard approved marine sanitation device.
- (g) All thrill craft and other vessels and equipment must be registered in accordance with section 13-256-4(a), notwithstanding section 13-256-4(b), and must display a current Ocean Recreation Management Area decal.
- (h) Replacement or substitution of any existing vessels or equipment shall require prior written approval by the department and the department shall have discretion to permit vessel substitution with a similar length vessel; provided that the increase shall not be greater than ten per cent of the length of the vessel being substituted as it existed on May 22, 2000. An increase of greater than ten per cent of the length of the authorized vessel of record on May 22, 2000 is prohibited.
- (i) In the event there is a sale or transfer of a majority of ownership interest in the business to a person not an owner or a shareholder of record after the effective date of this section, the number of host vessels allowed per permit shall be reduced to one host vessel, unless the sale or transfer is to a family member.
- (j) Educational and not-for-profit tours shall not be counted against daily customer limits, but the permittee's total number of passengers shall not exceed the maximum number of one hundred fifty customers allowed per day. Not-for profit tours and passengers shall not be mixed with commercial customers on the vessel at the same time. Not-for-profit passengers shall not engage in thrill craft or high speed towing activities.
- (k) Any transfer or combination of transfers by the owners or shareholders of record of a business entity holding a permit that results in a transfer of a majority interest or greater in the business entity shall automatically void the use of thrill craft, high speed towing/water sledding, and water skiing activities and the permit shall revert to a large snorkel tour permit as found in section 13-256-73.5 unless the transfer is to a family member. A transfer shall result in the assessment of a business transfer fee in accordance with section 200-37, HRS, for a transfer that includes the use of thrill craft and in accordance with section 13-256-7 for the transfer of a large snorkel tour.
- (l) High speed operations must take place in deep water 200 feet or more from any reef edge, reef crest, or sand flat.
- (m) For the Checker Reef area, host vessel(s) must be moored with bow and stern anchoring as approved by the department, thirty feet or more off of the reef on the south and

west edge of Checker Reef, with no obstruction of the use of the channel passing to the southwest of the reef.

(n) The permittee shall identify and mark the boundaries of the designated thrill craft operating zone with temporary floating buoys only installed during periods of operation.”.
[Eff] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-37, 200-39) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-37, 200-39)

10. Chapter 13-256, Hawaii Administrative Rules, is amended by adding a new section 13-256-73.3 to read as follows:

“§13-256-73.3 Small full service permit restrictions.

(a) Not more than seventy customers per day per permit shall be permitted for a small full service permit.

(b) The number and type of vessels and equipment which may be authorized by the department under this permit category are:

- (1) One host vessel with a maximum passenger carrying capacity of seventy passengers;
- (2) Three rental thrill craft and one thrill craft used for operational safety purposes;
- (3) Two equipment barges, the passenger carrying capacity of each shall be six or as established by a United States Coast Guard Certificate of Inspection;
- (4) Two small motor boats, the passenger carrying capacity of each shall be six or less, as established by a United States Coast Guard Certificate of Inspection; and
- (5) Other non-motorized craft including kayaks, canoes, wind surfers, sailboards, small sailing vessels no larger than 20 feet, and individual water sports equipment as needed.

(c) The passenger carrying capacity of the host vessel and service barges having a capacity of over six passengers shall be established by a United States Coast Guard Certificate of Inspection.

(d) The host vessel shall be allowed to load passengers to the full permit capacity of seventy. Should the certified passenger capacity of the vessel be less than seventy, the vessel may conduct more than one passenger loading trip to the pier to achieve the maximum number of customers permitted per day.

(e) The two small motorboats authorized under this permit may be either operated directly by the permittee or under contract with another party. Not more than one small motorboat shall be authorized to load or unload passengers at the pier.

(f) A United States Coast Guard approved marine sanitation device or portable toilet shall be located on either the host vessels or one of the equipment barges.

(g) All thrill craft and other vessels and equipment must be registered in accordance with section 13-256-4(a), notwithstanding section 13-256-4(b), and display a current Ocean Recreation Management Area decal.

(h) Replacement or substitution of any existing vessels or equipment shall require prior written approval by the department and the department shall have the discretion to permit vessel substitution with a similar length vessel; provided that the increase shall not be greater than ten per cent of the length of the vessel being substituted as it existed on May 22, 2000. An increase of greater than ten per cent of the length of the authorized vessel of record on May

22, 2000 is prohibited.

(i) Educational and not-for-profit tours shall not be counted against daily customer limits, but the permittee's total number of passengers shall not exceed the maximum number of seventy customers allowed per day. Not-for-profit tours and passengers shall not be mixed with commercial customers on the vessel at the same time. Not-for-profit passengers shall not engage in thrill craft or high speed towing activities.

(j) Any transfer or combination of transfers by the owner or shareholders of record of a business entity holding a permit that results in a transfer of a majority interest or greater in the business entity shall automatically void the use of thrill craft, high speed towing/water sledding, and water skiing activities and the permit shall revert to a small sail/snorkel tour permit as found in section 13- 256-73.6, unless the transfer is to a family member. A transfer shall result in the assessment of a business transfer fee in accordance with section 200-37, HRS, for a transfer that includes the use of thrill craft and in accordance with section 13-256-7 for the transfer of a small sail/snorkel tour.

(k) High speed operations must take place in deep water two hundred feet or more from any reef edge, reef crest, or sand flat.

(l) The permittee shall identify and mark the boundaries of the designated thrill craft operating zone with temporary floating buoys only installed during periods of operation."

[Eff] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-37, 200-39) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-37, 200-39)

11. Chapter 13-256, Hawaii Administrative Rules, is amended by adding a new section 13-256-73.4 to read as follows:

"§13-256-73.4 Small full service permit restrictions without thrill craft, watersledding, and high speed towing activities.

(a) No more than seventy customers per day per permit shall be permitted for a small full service permit without thrill craft , watersledding, and high speed towing activities.

(b) The number and type of vessels and equipment which may be authorized by the department under this permit category are:

(1) One host vessel with a maximum passenger carrying capacity of seventy passengers.

(2) Two equipment barges, the passenger carrying capacity of each shall be six or as established by a United States Coast Guard Certificate of Inspection.

(3) Two small motorboats, the passenger carrying capacity of each shall be six or less, as established by a United States Coast Guard Certificate of Inspection; and

(4) Other non-motorized craft including kayaks, canoes, wind surfers, sailboards, small sailing vessels no larger than 20 feet, and individual water sports equipment as needed.

(c) The passenger carrying capacity of the host vessel and service barges having a capacity of over six passengers shall be established by a United States Coast Guard Certificate of Inspection.

(d) The host vessel shall be allowed to load passengers to the full permit capacity of seventy. Should the certified passenger capacity of vessel be less than seventy, the vessel may conduct more than one passenger loading trip to the pier to achieve the maximum number

of customers permitted per day.

(e) The two small motorboats authorized under this permit may be either operated directly by the permittee or under contract with another party. Not more than one small motorboat shall be authorized to load or unload passengers at the pier.

(f) A United States Coast Guard approved marine sanitation device or portable toilet shall be located on either the host vessel or one of the equipment barges.

(g) All vessels and equipment must be registered in accordance with section 13-256-4(a), notwithstanding section 13-256-4(b), and display a current Ocean Recreation Management Area decal.

(h) Replacement or substitution of any existing vessels or equipment shall require prior written approval by the department and the department shall have discretion to permit vessel substitution with a similar length vessel; provided that the increase shall not be greater than ten per cent of the length of the vessel being substituted as it existed on May 22, 2000. An increase of greater than ten per cent of the length of the authorized vessel of record on May 22, 2000 is prohibited.

(i) Educational and not-for-profit tours shall not be counted against daily customer limits, but the permittee's total number of passengers shall not exceed the maximum number of seventy customers allowed per day. Not-for-profit tours and passengers shall not be mixed with commercial customers on the vessel at the same time.

(j) Any transfer or combination of transfers by the owners or shareholders of record of a business entity holding a permit that results in a transfer of a majority interest or greater in the business entity shall automatically cause the permit to revert to a small sail/snorkel tour permit as found in section 13-256-73.6, unless the transfer is to a family member. A transfer shall result in the assessment of a business transfer fee in accordance with section 13-256-7.

(k) Thrill craft, watersledding, waterskiing and high speed towing are not authorized activities under this permit."

[Eff] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-39) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-39)

12. Chapter 13-256, Hawaii Administrative Rules, is amended by adding a new section 13-256-73.5 to read as follows:

"§13-256-73.5 Large snorkel tour permit restrictions.

(a) No more than one-hundred fifty customers per day or the historical daily average of the months July, August, and September of the calendar years 1996 thru 2000, whichever is lower, not to be less than seventy customers per day per permit shall be permitted.

(b) The passenger carrying capacity of the vessel(s) having a capacity of over six passengers shall be established by a United States Coast Guard Certificate of Inspection.

(c) All associated operational and supporting activities on land must meet all applicable land use laws and zoning ordinances, including, but not limited to the number of passengers allowed and approved for loading from private lands or as approved by the department through a conservation district use permit.

(d) Snorkel tours shall be conducted in Zones "D" and "E" within Kaneohe bay waters, pursuant to section 13-256-73.

(e) All stops for other than snorkeling shall be within the commercial area of the sand flat area within Kaneohe Bay waters designated as restricted zone I and shall not exceed two hours. Only non-motorized equipment may be used for water sports recreation.

(f) Any vessel authorized on the effective date of these rules to load passengers from the Heeia Kea Small Boat Harbor pier under a permit issued pursuant to chapter 13-231 is permitted to load to full certified passenger capacity.

(g) Replacement or substitution of any existing vessels or equipment shall require prior written approval by the department and the department shall have discretion to permit vessel substitution with a similar length vessel; provided that the increase shall not be greater than ten per cent of the length of the vessel being substituted as it existed on May 22, 2000. An increase of greater than ten per cent of the length of the authorized vessel of record on May 22, 2000 is prohibited. Additional motorized and non-motorized vessels and equipment not authorized on July 1, 1993 by the department shall not be allowed.

(h) Educational and not-for-profit tours shall not be counted against daily customer limits, but the permittee's total number of passengers shall not exceed the maximum number of customers allowed per day. Not-for-profit tours and passengers shall not be mixed with commercial customers on the vessel at the same time.

(i) All vessels shall be registered in accordance with section 13-256-4(a), notwithstanding section 13-256-4(b), and display a current Ocean Recreation Management Area decal.

(j) Permittees or owners or shareholders of record of business entities holding permits may transfer any interest in the business. Any transfer of interest in the business shall result in assessment of a business transfer fee in accordance with section 13-256-7.

(k) When the Kualoa full service permit or a large full service permit turns into a large snorkel tour permit because of a transfer or ownership to a non-family member, no additional motorized or non-motorized vessels or equipment shall be allowed to be added to the existing authorized inventory.

(l) When a large snorkel tour permit transfers ownership to a non-family member no more than seventy customers per day shall be permitted."

[Eff] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-39)

(Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-39)

13. Chapter 13-256, Hawaii Administrative Rules, is amended by adding a new section 13-256-73.6 to read as follows:

"§ 13-256-73.6 Small sail/snorkel tour permit restrictions.

(a) Not more than sixty customers per day or the historical daily average of the months July, August, and September of the calendar years 1996 thru 2000, whichever is lower, not to be less than thirty five customers per day per permit shall be permitted.

(b) The passenger carrying capacity of the vessel(s) having a capacity of over six passengers shall be established by a United States Coast Guard Certificate of Inspection.

(c) Snorkel tours shall be conducted in Zones "D" and "E" within Kaneohe Bay waters, pursuant to section 13-256-73.

(d) All stops for other than snorkeling shall be within the commercial area of the sand flat area within Kaneohe Bay waters designated as restricted zone I and shall not exceed one hour. Only non-motorized equipment may be used for water sports recreation.

(e) Any vessel authorized on the effective date of these rules to load passengers from the Heeia Kea Small Boat Harbor pier under a permit issued pursuant to chapter 13-231 is permitted to load to full certified passenger capacity.

(f) Replacement or substitution of any existing vessels or equipment shall require prior written approval by the department and the department shall have discretion to permit vessel substitution with a similar length vessel; provided that the increase shall not be greater than ten per cent of the length of the vessel being substituted as it existed on May 22, 2000. An increase of greater than ten per cent of the length of the authorized vessel of record on May 22, 2000 is prohibited. Additional motorized and non-motorized vessels and equipment not authorized on July 1, 1993, by the department shall not be allowed.

(g) Educational and not-for-profit tours shall not be counted against daily customer limits, but the permittee's total number of passengers shall not exceed the maximum number of customers allowed per day. Not-for-profit tours and passengers shall not be mixed with commercial customers on the vessel at the same time.

(h) All vessels shall be registered in accordance with section 13-256-4(a), notwithstanding section 13-256-4(b), and display a current Ocean Recreation Management Area decal.

(i) Permittees or owners or shareholders of record of business entities holding permits may transfer any interest in the business. Any transfer of interest in the business shall result in assessment of business transfer fee in accordance with section 13-256-7.

(j) When a small full service permit turns into a small snorkel tour permit because of a transfer of ownership to a non-family member, no additional motorized or non-motorized vessels or equipment shall be allowed to be added to the existing authorized inventory.

(k) When a small snorkel tour permit transfers ownership to a non-family member no more than thirty-five customers per day shall be permitted."

[Eff] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-39)
(Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-39)

14. Chapter 13-256, Hawaii Administrative Rules, is amended by adding a new section 13-256-73.7 to read as follows:

"§ 13-256-73.7 Glass bottom boat tour permit restrictions.

(a) The passenger carrying capacity of the vessel shall be established by a United States Coast Guard Certificate of Inspection. If a vessel has no U.S.C.G Certificate of Inspection, the vessel's capacity shall not exceed six passengers.

(b) The maximum number of passengers per outing shall be seventy passengers. Passengers may be loaded and unloaded only at the Heeia Kea small boat harbor pier.

(c) The vessel shall be equipped with a United States Coast Guard approved marine sanitation device.

(d) The vessel shall be registered in accordance with section 13-256-4(a), notwithstanding section 13-256-4(b), and display a current Ocean Recreation Management Area decal.

(e) Educational and not-for-profit tours shall not be counted against daily customer limits, but shall not exceed the maximum number of seventy customers allowed per outing. Not-for-profit tours and passengers shall not be mixed with commercial customers on the vessel at the same time.

(f) Replacement or substitution of any existing vessels or equipment shall require prior written approval by the department and the department shall have discretion to permit vessel substitution with a similar length vessel; provided that the increase shall not be greater than ten per cent of the length of the vessel being substituted as it existed on May 22, 2000. An increase greater than ten per cent of the length of the authorized vessel of record on May 22, 2000 is prohibited. Additional motorized and non-motorized vessels and equipment not authorized on the effective date of these rules by the department shall not be allowed.

(g) Permittees or owners or shareholders of record of business entities holding permits may transfer any interest in the business. Any transfer of interest in the business shall result in assessment of business transfer fee in accordance with section 13-256-7.

(h) An exchange of passengers between the glass bottom boat tour permittee and any other permittee shall not be allowed.”

[Eff] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-39)

(Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-39)

15. Chapter 13-256, Hawaii Administrative Rules, is amended by adding a new section 13-256-73.8 to read as follows:

“§ 13-256-73.8 Replacement vessels size restrictions.

(a) Replacement vessels shall not be greater in vessel length overall than 10 % of the vessel overall length authorized on May 22, 2000.

(b) Replacement of any existing vessels or equipment shall require prior written approval by the department.”

[Eff] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-37, 200-39)

(Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-37, 200-39)

16. Chapter 13-256, Hawaii Administrative Rules, is amended by adding a new section 13-256-73.9 to read as follows:

“§ 13-256-73.9 Shuttling restrictions.

No shuttling or transferring of customers among the permittees for the purpose of exceeding the maximum daily customer limit specified by type of permit or exceeding the certified passenger capacity of the vessel shuttling or receiving the passengers shall be allowed.”

[Eff] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-37, 200-39)

(Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-37, 200-39)

17. Chapter 13-256, Hawaii Administrative Rules, is amended by adding a new section 13-256-73.10 to read as follows:

“§ 13-256-73.10 Permit Issuance.

(a) Permittees holding valid permits on the effective date of these rules shall be offered the opportunity to apply for the permit category in which they are operating. If any permit offer is refused by the permittee, that permit shall not be issued and shall be eliminated from the total number of Kaneohe Bay ocean waters commercial activity use permits.

(b) Permit applications shall be reviewed for compliance with chapter 200, HRS, applicable rules, and permit conditions. Failure to comply with any permit condition, or having any record of inaccurate submission of gross receipts, inconsistent or untimely payments of fees and charges, or unsafe operations during the last term of a valid permit held by the applicant, may be cause for rejection of the permit application.

(c) The following documents shall be submitted for review at the time an application is made for the issuance of a permit:

- (1) Vessel documentation or registration.
- (2) Vessel certificate of inspection (if applicable).
- (3) Certificate of business liability insurance which insures all activities of permittee, including coverage for the operation of thrill craft or other activities including, but not limited to, canoeing, sailing, windsurfing, water sledding, snorkeling, scuba diving or other underwater activities, if applicable.
- (4) General excise tax license.
- (5) Copy of current business registration certificate on file with the department of commerce and consumer affairs.
- (6) Tax clearance certificate from the department of taxation.
- (7) Conservation district use permits (if applicable).
- (8) Affidavit describing any and all accidents, or safety related issues or events, including those affecting employees or customers, that have occurred within the past year.
- (9) Affidavit describing any and all warnings, discrepancies, citations, fines, penalties and convictions levied by the United State Coast Guard, department of land and natural resources, Honolulu police department, City and County of Honolulu, department of planning and permitting, or any other regulatory agency.
- (10) Affidavit describing any and all sales or transfers of any ownership interest in the business.

(d) The department shall publish a list of Kaneohe Bay waters commercial activity use permits scheduled for issuance to incumbent permit holders thirty days prior to the expiration dates of the preceding permits issued in a newspaper of general circulation in the Kaneohe area, with a copy to the Kaneohe Bay Regional Council, inviting public comment on this list and the incumbent permit holders. Any request that a permit not be issued must be accompanied by factual supporting documentation showing the incumbent permittee's failure to meet permit issuance requirements of this chapter.

(e) Insurance requirements for all commercial vessels and all activities conducted on or in the water of Kaneohe bay shall be not less than \$50, 000 for property damage and not less than \$1,000,000 for liability. The liability insurance shall name the State of Hawaii as an additional insured. Any subcontractor employed by a permittee, such as, but not limited to, a scuba diving instructor, shall have insurance coverage which provides the same coverage as required of the permittee and names the State of Hawaii as a additional insured. The permittee and its subcontractors shall provide to the Department certificate(s) of insurance that cover any and all activities conducted under the permit.

(f) In the event an application for the issuance of a new permit is denied, the applicant will be afforded the opportunity for a hearing in accordance with section 13-231-31 and section 13-231-32 for the sole purpose of allowing the applicant to contest the basis of the denial. The opportunity of a hearing shall not apply to automatic expiration provisions of these rules.”

[Eff _____] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-37, 200-39) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-37, 200-39)

18. Chapter 13-256, Hawaii Administrative Rules, is amended by adding a new section 13-256-73.11 to read as follows:

“§ 13-256-73.11 Temporary mooring of vessels authorized for commercial use in Kaneohe Bay at Heeia Kea small boat harbor.

No temporary mooring permit shall be issued authorizing temporary mooring of the same vessel that is authorized for commercial use in Kaneohe Bay ocean waters, within Heeia Kea small boat harbor for a cumulative period of more than 180 days, provided that space is available, in the same calendar year.”

[Eff _____] (Auth: HRS §§200-2, 200-3, 200-4, 200-6, 200-22, 200-23, 200-24, 200-39) (Imp: HRS §§200-2, 200-3, 200-4, 200-6, 200-22, 200-23, 200-24, 200-39)

19. Chapter 13-256, Hawaii Administrative Rules, is amended by adding a new section 13-256-73.12 to read as follows:

“§ 13-256-73.12 Kaneohe Bay ocean waters commercial activity use permit revocation.

Revocation of a Kaneohe Bay waters commercial use permit shall be accomplished in accordance with section 13-231-6.”

[Eff _____] (Auth: HRS §§200-2, 200-3, 200-4, 200-6, 200-22, 200-23, 200-24, 200-39) (Imp: HRS §§200-2, 200-3, 200-4, 200-6, 200-22, 200-23, 200-24, 200-39)

20. Chapter 13-256-77, Hawaii Administrative Rules, is amended to read as follows:

“§ 13-256-77: Kaneohe [commercial high speed boating] recreational thrill craft zone.

(a) The [high speed boating] recreational thrill craft zone is the area encompassed by the boundaries of the zone shown on Exhibit “V”, dated [May 15, 1990] April 16, 2001, and located at the end of this subchapter. The boundaries of Zone K are as follows:

[Beginning at a point in the water at the intersection of the Kaneohe Sampan channel ranges extending seaward with an azimuth measure clockwise from True South of 217 degrees, and the Kaneohe Bay waters boundary, establishing the southeastern boundary of the zone; then in a straight line to a point in the water at the intersection of the Kaneohe ship channel ranges extending seaward with an azimuth measure clockwise from True South of 227 degrees, and the seaward boundary of Kaneohe Bay waters, establishing the northwest boundary of the zone.]

Beginning at a point in the water at approximately 21° 28' 23.5" N / 157° 48' 27" W, that intersects the Kaneohe Sampan channel range extending seaward with an azimuth

measured clockwise from True South of 217 degrees, and a straight line drawn to a point in the water at approximately 21° 30' 42" N / 157° 48' 52" W, that intersects Kaneohe ship channel range extending seaward with an azimuth measured clockwise from True South of 227 degrees, establishing the southwestern boundary of the zone. The northwestern boundary of the zone is the straight line that is an extension seaward of the Kaneohe ship channel range with an azimuth measured clockwise from True South of 227 degrees to the limit of the territorial sea. The southeastern boundary of this zone is the straight line that is an extension seaward of the Kaneohe Sampan channel range with an azimuth measured clockwise from True South of 217 degree to the limit of the territorial sea.

As an aid in locating the southwestern boundary, it exists between the Kaneohe Sampan channel and Kaneohe Ship channel ranges along a straight line which can be seen by sighting a straight line between Pyramid Rock which is located at approximately 21° 27' 42" N / 157° 45' 48" W, and Kaoio Point which is located at approximately 21° 32' 03" N / 157° 50' 16" W.

This zone is designated as a [commercial high speed boating] recreational thrill craft zone. Other vessels shall exercise caution when transiting this area. [No more than four commercial operating area use permits for high speed boating shall be issued for this zone. This zone shall be closed to commercial high speed boating annually, during the whale season, from December 15 to May 15 of the following year.]” [Eff 2/24/94] (Auth: HRS §§200-22, 200-23, 200-24, 200-37, 200-39) (Imp: HRS §§ 200-22, 200-23, 200-24, 200-37, 200-39)

21. § 13-256-78 to §13-256-85 (Reserved)
22. Material, except source notes, to be repealed is bracketed. New material is underscored.
23. Additions to update source notes to reflect these amendments are not underscored.
24. These amendments to chapters 13-231, and 13-256, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on _____ by the Board of Land and Natural Resources, and filed with the Office of the Lieutenant Governor.

March 29, 2007 DRAFT

Peter T. Young, Chairperson
Department of Land and Natural Resources

APPROVED AS TO FORM:

Deputy Attorney General